619 675 "Jumi'at, Marabtiin (plural of Marabit) of the 'Ali Ahmar." All Marabit tribes of the Western Desert are affiliated as
* [613] clients with Sa'adi tribes. Further, since the tertiary group of the Marabtiin functions in the same way as that of the Sa'adi, it is this group which enters into compacts with Sa'adi tertiary groups. Traditionally, the Marabit group's
[682] main support activity was to share in the payment of the blood-money with its Sa'adi protector group. In return, the Marabit group was given land in the protector's territory and could depend upon them to contribute to any Marabit blood debt which might come due. Also, it was considered the
[628] [682] duty of the Sa'adi to revenge the death of a member of his client group since the Marabit "was weak and could not face a
[608] tribe." But there is no attempt to construct fictional kinship links between Sa'adi and Marabit groups.

• [672] In al-Qasr today, contractual relations between Sa'adi and Marabit are still based upon collective responsibility in the blood-feud. However, since this traditional means of conflict control is an extremely rare occurrence, the mutual obligations of the parties are expressed in different forms.
[648] In any conflict between the Bedouins and the Egyptian government, the Marabtiin are expected to support their respective
[666] Sa'adi groups. In any modern elections which a Sa'adi might enter, the Marabit is expected to give him his vote. A few examples will make clear the relationship between the Sa'adi

121 621 591 675 608 597 basis of an agreement "to share the good and the bad" by all parties concerned. Once the integration is effected, patrilineal ideology and legal fiction succeed in concealing the jointure.

621 591 *613 The concept which derives from ancient Arabia, and which expresses fully the structural principles of Bedouin society is that of 'aqila. The 'aqila, in al-Qasr, is the head of the corporate group, the tertiary unit or bait. A [884] person becomes part of the Bedouin jural body when he reaches the age of 15, begins to keep the Ramadan fast, and is expected to pay his share of the blood-money. At this time, a man 621 591 *613 •672 [682] acquires rights over his corporate lineage-mates and they over him: they claim a share in the indemnity ("blood-money" - diiya) of each other, and are under obligation to contribute equal shares to any diiya which becomes due from the group as a whole. Further, each corporate member is morally bound to support his lineage-mates by swearing the oath (yamiin) on the behalf of any who are accused of falsehoods in the course of litigation. All of these rights and obligations are guaranteed by the presence of an 'aqila.

*613 The tertiary bait is the minimal corporate group. It usually includes three to five generations of members. Tertiary units which are descended from a common ancestor combine through contractual relations into the maximal corporate group, the secondary unit or 'aiela. Beyond the secondary level

Law and Political Order: 'Awaiyid Awlad 'Ali

671 [772] A "holy man" in al-Qasr, who has intimate knowledge of both the Quran and Bedouin law, has this to say on the subject of the 'awaiyid Awlad 'Ali:

671 171 The Sharii'a (Islamic Law) was given by God, and it guides man concerning what is good and what is bad: it is for all Muslims. The 'awaiyid was made by man for the Bedouins: it is for settling problems and evaluating damages. The 'awaiyid is natural, made by man and the Awlad 'Ali for settling the problems of the Bedouins. It is different from the Sharii'a. The Awlad 'Ali made the 'awaiyid, not the ashraaf ("holy men"); but the "holy men" approved it. The 'awaiyid agrees with the Sharii'a, but not in everything for it is not from the Sharii'a. Shari'it Muhammad ("the law of the Prophet") is one thing and the 'awaiyid is another. The Sharii'a says an eye for an eye, a tooth for a tooth, and a life for a life: the 'awaiyid also says an eye for an eye, a tooth for a tooth, and a life for a life, but in a different way: the 'awaiyid involves money. The 'awaiyid judges a situation; the dhabiiha ("blood sacrifice," usually a lamb as an expiatory fee) and the fine are paid and the problem is solved . . . The 'aqila is better than the government for settling problems in the desert. The government may put a man in prison, and if he dies there you will be responsible to his father and brothers. There is a more liberal judgment here in al-Qasr, and God prefers that we settle our problems through peace . . . If a man dies in prison, it is no sin before God but the Bedouins consider it a sin.

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671 At the present time, the customary law of the Awlad 'Ali prevails in al-Qasr, and, I suspect, this body of legal and moral norms will be the basis for Bedouin social and political action for some time in the future. In any case, it furnishes us with a base-line from which any future studies of social

181 of his rights;" a man should be courageous enough to fight
641 for what belongs to him and his family. These values, which
578
571 become political values in a tribal context, coupled with the idea of self-help make for a political order which is ultimately based upon the law of blood-revenge and feud. At least this is the case where the external system of authority relations is concerned. But force as the ultimate mechanism for the
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571 establishment of political order is better considered an
182 extreme, and only one of the mechanisms used by the Bedouins in the process of conflict regulation. The attempt is to establish a balance of rights, concerning honor and property, and not to go beyond another's boundaries lest he retaliate. Force, as a coercive institution, can never be the sole basis of political structure, as Schapera has shown in the case of the Bergdama and Bushmen (1956:211-221). Thus the Bedouins
[681] say blood-revenge would be impossible within the secondary
* [613] corporate group; relations this important cannot be based
[682] upon force. In the case of homicide within this group compensation is immediately forthcoming.

571 Also, it has been pointed out that self-help and
• 672 collective responsibility do not operate indiscriminately.
* 613 That is, an individual cannot depend upon the backing of
[578] his group irrespective of his own motivations in a particular situation which calls for retaliation or threatened the group with retaliation. Individual responsibility figures in cases

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672 other than those dealing with blood-revenge too. For instance,
613 in matters concerning personal debts incurred, the group is
571 not responsible for the individual. The Bedouins say that if
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613 a man has the money he must repay his debts: if he does not
426 have the money, then he must ask a rich relative to pay his debts for him. He is then in debt to his relative and, out of respect for him, should not borrow money or go into debt
558 again. If he does, he will bring dishonor ('ar) to his
681 family and they will, ultimately, banish him. There was dis-
682 agreement among my informants as to whether or not they
613 should contribute to a diiya which was compensation for an
829 intentional slaying. Some said that they would not question
124 the motives of their kinsman who has killed because "we are together in the good and the bad, and I must pay for him just as he must pay for me." But others held the opinion, which I feel was a prevailing one, that one must take into account the justifiability of the killing. This seems to have been the case in the past, for the Bedouins say that traditionally the bait of the killer had to pay one-half of the diiya.

613 All things political somehow relate to the payment
682 of blood-money. We have seen that the essential function
681 of the 'aqila, and even the condition of his taking office,
182 refers to the responsibility of collecting the diiya from
571 the members of his group. The criterion of being a member

*613 682 impossible within the corporate group. Middleton and Tait (1958:19) have generalized on this point, and Wagner (1940: 218) has been very explicit: "When a breach of law occurs within a given group (lineage, sub-clan, or clan) and the nature of the offence is such that it affects those interests which are specific to the group and not further divisible, a restoration of the breach by compensation is obviously impossible, as it would necessitate the splitting of the group into two units . . . " The Bedouins avoid division in such cases by holding the whole secondary group responsible for the diiya, and usually the share of the diiya which would be forthcoming from the killed man's tertiary segment is excluded from the total payment. It seems that either the Bedouins represent an atypical case, or Africanists have failed to make a sharp and analytical difference between the blood-vengeance grouping and the group which actually shares in the paying and receiving of blood money.

[672]

Bedouin law and political order, then, center on the institution of blood-revenge or retaliation. The payment of compensation as a prevention of blood-feud is a central concern of the 'awaiyid Awlad 'Ali. Murray (1935:313-328) presents a Bedouin legal document "signed with the seals of twenty-two sheikhs testifying to the accuracy of the code" which set forth the main tenets of the 'awaiyid of the Western Desert. I checked the contents of this document with

671 [682] [626]

property disputes, and I shall briefly discuss this before I proceed to describe Bedouin legal processes. Besides the threat of blood-revenge and fines of money, the individual, or group, who violates the moral and legal norms of Bedouin society may be faced with sanctions of a sacred nature. In any case where clear evidence is lacking, one litigant may request that that other party swear the oath (yamiin Allah) in support of his claim. In all three corporate charters presented earlier in this chapter, those of 'Ailit Ma'fas, 'Ailit Lazumi, and 'Ailit Abu Qarasa, support of lineage-mates through the oath was a condition of group membership. Collective responsibility not only applies in the case of secular things, i.e., sharing the blood-money and the exercise of blood-revenge, but also where the possible curse of God is concerned.

When one party to conflict requests that the oath be administered as a means of settling a dispute, the other party will always accept because it is assumed that in this way both litigants "will get their rights." The party taking the oath must be supported by a number of his relatives ('umraa al-dam) who are willing to risk the consequences, and who are chosen by the other party. If a man is unable to muster the required number of kinsmen to take the oath, and the number is always relative to the seriousness of the offense of which he is accused, then this is taken as a sign of his untruthfulness and he loses his claim.

156 the group--in effect questions a great deal about the whole
159 traditional authority structure. Blood-revenge functions as
554 a deterrent to social disorder in that it represents an
829 automatic mechanism for restoring a balance of good relations
682 in the society. Actually, Hajj 'Ali exaggerated to make a
[182] point when he spoke of the existence of "unbalanced people."
682 A person would indeed be "unbalanced" who did not take into
•672 consideration the repercussions of his acts with respect to
*613 the personal danger and the dishonor and shame it would bring
to his 'aiela and bait. Although the 'aiela members are
willing to share in the blood money for accidental or unpre-
meditated killings, it is wrong to suppose that the Bedouins
do not attempt to weigh the justifiability and culpability
[671] in matters of killing. The very existence of the 'awaiyid
Awlad 'Ali argues against this. Obviously, the dichotomy made
between killing in the 'awaiyid, i.e., intentional and accidental,
and the concomitant gradation in compensation points to some
kind of reasonable consideration in cases of killing.

156 Hajj 'Ali is discontent with yet another aspect of
159 the traditional authority structure. He questions the logic
554 and authority represented in the oath as a sacred sanction.
695 This says something about the degree of secularization which
829 Hajj 'Ali has undergone. Although he does not say so, he
apparently favors a more secular and logical procedure for
determining a man's guilt or innocence.

619 The picture was reversed then with the poor Sa'adi shepherds becoming
184 the masters, acquiring great wealth and prestige because of their fight-
174 ing ability, and the holymen becoming the shepherds and clients of the
792 Sa'adi fighters. In the old inter-tribal wars, the Murabiteen stood a
[651] very limited chance so the Sa'adi tribes adopted them and in return for a yearly tribure guaranteed theprotection of the Murabiteen from external aggression.

As time passed, the main difference between the Sa'adi and Murabiteen tended to diminish. One or two outstanding Murabiteen tribes fought their own battles without seeking the protection of the Sa'adi and remained independent, while a few others rose up and fought on with the protector against a common foe (the case of the Gemei'at tribe is an example) and in return were emancipated from the stigma of serfdom and accepted by the Sa'adi as almost equals. Other Murabiteen tribes remained attached to their Sa'adi protector as client groups.

Ibn Khaldoun also saw the inferiority of the Murabiteen tribes as stemming from a mode of tribal relations adapted to inter-tribal warfare (1845).

613 The Eila

The Eila represents the next level of tribal segmentation among the Awlad Ali. The Eila is the most important political unit. Although the Eila lacks any formally recognized leadership, its importance stems from the fact that it constitutes the vengeance group or Amar El-Dam (unity of
613 the blood). This means that it bears a corporate responsibility for the
672 actions of its members. Anyone of its members can be killed in vengence
682 for a homocide committed by any other, and the duty of revenge for any

613 member falls on all members alike, regardless of the exact genealogical
672 relationship to the victim. When bloodmoney is to be paid, its members
682 pay it as a group, divided among all male adults; and although when they receive it, a bigger portion goes to the nearest agnates of the victim, the remainder is distributed equally among all its members.

613 The genealogical depth of the Eila is usually five generations. This is not always true, however, In certain instances the number of generations intervening between the founder of the Eila and its living members is nine or even ten. Naturally, the more generations the larger the size of the Eila. Sometimes the Eila becomes so numerous that it is [217] hard to keep records of all members who are supposed to share in the payment of the bloodmoney in a specific case. When the size of the Eila reaches this point, one of two things may happen. The first is an attempt to make lists of the members. Many of the Eilas have such lists. This
613 is usually accompanied by a tendency toward writing down the specific
675 rules and regulations of the vengeance group. These lists are referred to as Amar papers. They constitute a formal statement of an otherwise informally recognized responsibility of the group for certain actions of its members. The other is a tendency toward the fission of one or more of its constiuent units which, after separation, establishes itself as an independent Amar. The factors underlying this process of fission are discussed in the next chapter.

[539] The following is an example of an Amar paper, that of the Eilat Aggary, which was put into effect in 1954.

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[681]
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Each Aqila is responsible for submitting to the Amar a list of the Sayems in his bait, and this will be the basis for establishing the share of the bait in payment or receipt of the money.

Article 5:

No Aqila can act on any matter involving loss or gain to the Amar without the presence of the other Awaqil of the Amar, unless an urgent matter occurs in which waiting for the rest of the Awaqil might jeopardize the interest of the Amar. In such cases the Awaqil present can act on behalf of the Amar as a whole.

Article 6:

[672] [673] The following acts should not involve the Amar as a whole and the offender is considered individually (or with his own Bait) responsible for them:

1. Theft and cheating.
2. Insult or disrespect of a younger member of the Amar to an older person whether from the Amar or not.
3. Entering someone's tent or home without permission.
4. Seduction of women (including rape and adultery).

[681] In all the above cases the individual has to bear the responsibility for his own actions. For to let the Amar pay for him in such circumstances is to encourage him and other such members of the Amar to commit more of such acts and bring disgrace to the Amar. If the offender is unable to pay for his crime, his nearest male kin should pay for him in accordance with the Awlad Ali Daraieb. Such payments are considered as personal debts which the offender has to pay back as soon as he is financially able.

Article 7:

[627] When an older person does injustice to a younger one, the latter should take his complaint to the Aqila of his own bait. The Aqila in turn should take the matter up with the Aqila of the older man or to all the awaqil of the Amar if the matter is serious enough. The awaqil must assess the facts and prevent the older man from doing any more injustice to the younger man and have the former compensate him for any damage he might have caused the younger man by his actions. If the awaqil fail to do this and if their failure resulted in the younger insulting or hurting the older, his acts become no longer an individual responsibility for which he has to pay alone, and the Amar should pay for him.

Article 8:

[627] No members of the Amar should take sides in disputes involving families or individuals outside the Amar unless the awaqil in the Amar investigate the matter and the reasons for the dispute and decide that the Amar as a whole should be on one side of the dispute or the other.

613 578 672 671 681 Another factor which led to the need to formalize the rules of the Amar was the increase in the kind of disputes for which there is no provision in the customary law of Awlad Ali. Such disputes arise mainly out of situations which are relatively novel to the area. A large number of these situations involve the relationship between the tribal population and the government authorities recently taking a major part in managing the affairs of the area. There were no rules in Awlad Ali law to guide decisions in cases involving financial liability of a member of the Amar in cases such as confiscation of smuggled goods, destruction of government property, or false testimony leading to the conviction of a fellow tribesman by the government authorities. The list of cases such as these is rapidly increasing. Many members of the Amar refuse to share in the payment of liabilities arising out of such cases on the basis that since no provision has been made in the customary law of Awlad Ali, then the Amar as a whole should not take corporate responsibility for such actions. They assert that corporate responsibility of the Amar is the exception rather than the rule and therefore, where there is no specific rule, the responsibility is an individual one. Others insist that it is the corporate responsibility of the Amar in such matters that maintains the Amar as a group and gives incentives to the members to retain their membership in the Amar, and therefore, should be the rule rather than the exception, covering any form of liability unless individual responsibility is specified.

613 672 675 This made it essential to specify in some kind of formal statement which liabilities are to be considered collective for which the Amar has to pay as a corporate unit and which are to remain as individual responsibility. This is done either by listing the cases of individual

613 responsibility, leaving any other situation a collective responsibility,
672 or by specifying the cases of collective responsibility, implying that
675 all other responsibilities are as a rule individual ones. The Amar paper of the Aggary, for example, chose to list offenses for which the Amar is not responsible, leaving the rest of the liabilities to be covered by the Amar as a whole. This is not always the case. In some papers offenses for which the Amar is responsible are the ones listed leaving the general rule as the non-responsibility of the Amar.

613 It is in this respect that the Amar papers are considered an im-
671 portant source of legislation. Although the new rules incorporated in
675 an Amar paper start with the limited applicability to members of the Amar, yet, as time passes and as these rules affect the relationship of the Amar members to outsiders, one rule may acquire a wide practice and become part of the customary law itself. An example of the point in
613 question is the rule regulating the payment of the bloodmoney in cases
671 where the murderer is tried by the state courts for the same crime. In
675 cases of arrest of the murderer by the government, only half the blood-
682 money is paid and the other half is withheld until the trial is over. If the killer is acquitted by the court, then the other half becomes immediately due for payment. If, on the other hand, as mentioned before, the killer is convicted, half the bloodmoney is postponed until the person completes his sentence and is released unharmed and with his full senses. If he dies in prison or sustains an accident which affects his physical or mental capacities, the rest of the bloodmoney is automatically dropped. This rule was first included in a number of Amar papers, especially those of the Eilat of Awlad Kharouf tribe. In less than twenty years since it

613 671 675 682 first appeared, the rule has become a practice so common that other Amars find it unnecessary to specify it in their own papers.

Another new rule which is in the process of acquiring a great amount 613 672 675 of consensus among the tribal population of Awlad Ali is that of the responsibility of the Amar for the payment of the lawyer's fees for members [693] [695] of the Amar who are tried by the government (Article 13 of the Aggary papers). Another less agreed upon rule is that of the responsibility of 613 672 675 the Amar for the financial losses caused by the confiscation of smuggled goods or the payment of money for the destruction of government property 439 [434] by a member of the Amar. Where smuggling is an important source of income for the group, Amar papers usually include rules making it a corporate responsibility; other Amar papers, especially those of tribal segments not deeply involved in smuggling, make it an individual responsibility, while still others leave it intentionally with no specific rule, as in the case of the Aggary Amar paper.

613 [675] The Aggary document is a relatively elaborate one. Not all Amar papers, or at least the ones I had a chance to examine, are as detailed. [131] Eilat Aggary is the largest Amar in the area of Dera'el Bahari, which extends from Alexandria 60 miles westward to the town of Alamein. The 613 563 619 distinctive characteristics of the Aggary Eila is that it is composed mainly of peasant groups who joined the Aggary by means of tribal adoption. Of the 16 Baits constituting the Aggary Amar, only three are believed to be Awlad Ali proper. The attractiveness of the Aggary for the peasant groups seeking to be adopted by the tribal population of the area may be partly explained in terms of the location of Eilat Aggary in an area relatively close to the Delta from where these groups usually migrate.

613 If any disagreement between the
578 responsibility of the majority of the awaqil to persuade the minority to
571 conform to the majority's decision. This is usually done by simple per-
613 sonal persuasion. In certain instances, however, when a particular aqila
554 is known for being troublesome to the Amar, refusing to abide by the ma-
571 jority decisions, an attempt may be made by the others to build up pop-
578 ular support around another person in the Bait which the aqila represents. If this strategy is successful, it might lead to replacing the aqila by another who is more abiding to the Amar's decisions. This approach is more likely to succeed if the aqila is not a popular person in his own Bait, for if he is popular, any attempt by the other Baits to disqualify the aqila would be viewed by the members of his Bait as interference in their own affairs and might lead them to rally even more strongly around their leader.

613 The other tendency occurring when the size of the Eilat increases is toward the separation of one or more of its constiuent Baits. Origi-
613 nally this was done by merely refusing to share in the payment of blood-
682 money. If this refusal continued, it was considered as a sign of
[178] separation of the Bait. In recent years this created problems with an increasing number of individuals claiming separation from the Amar to avoid the payment of the bloodmoney, while claiming membership when dis-
613 tribution is done. This led many tribal segments to require that the
675 "barawa" or separation of individuals or tribal units from any particular Amar should be put in writing, after getting the approval of the Amar to which he belonged. When the approval is given and the separation in put in writing, it is announced to all other tribal segments. If this is
[672] done, members of the separated tribal segment are not held responsible

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[675]
[672] for the actions of the members of their former Amar, nor is the Amar responsible for theirs.

Units thus separated establish themselves as separate Amars. These units are commonly referred to as Eila, thus retaining the structural label of the higher order of segmentation. This is not always the case, however, and other segments may refer to them as Baits rather than as Eilat. This explains, at least in part, the tendency toward blurring the formal scheme on the next level of segmentation, that is, of the Bait, and may account for the variable meaning of the term Eilat itself.

The Bait

While the Eila or Amar-el-dam is the most important political unit by virtue of being the vengeance group and therefore, the individual's major support group, it is the Bait that constitutes the most visible political unit.

613
423 The Bait is the only corporate land-holding group. While the Eila is usually associated with a certain geographical locale which it considers as its homeland or "watan", it rarely, if ever, utilizes this land as a corporate unit. Instead, the land is divided among the various Baits constituting the Eila. The land of the Bait is not divided and each member of the Bait can, at least theoretically, cultivate or graze on any part of it.

613 But the one important characteristic of the Bait which distinguishes it as a political unit is the existence of a formally recognized leadership in the position of the Aqila (lit. wiseman). The Bait is the only structural unit with such formalized leadership. The Aqila is responsible for all members of his own Bait whose number varies from 20 to 60

PHASE I

613 578 682 [464] In September of 1956, Mansur from bait Eweidha of the Aggary Eila, who works as a driver in one of the government projects in the area, went to Alexandria with a friend, a member of the Gemei'at tribe. In one of the bars there, Mansur got drunk and entered into an argument with his friend. The argument turned into a fight during which he hit his friend with a broken bottle. Two days later, the friend died. A settlement was made between Mansur and the victim's family and bloodmoney was established at L. 300.

613 682 683 Two weeks after the above incident, the same person, Mansur, was driving the government car on his regualr duty when he ran over two members of the Sanagrah tribe who were sitting on the side of the road, killing one and breaking the leg of the other. Another settlement was made with the families of the victims. The bloodmoney for the dead man was established at L. 300 and another L. 50 was set as the compensation for the broken leg of the other man.

The total sum of compensations in the two incidents was divided among the sixteen baits constituting the Aggary Amar. The share of each bait was decided in proportion to the number of adult males (sayems) in each. The share of bait Asabei' alone was established at about L. 100.

613 682 683 672 558 As the Aqila of Bait Asabei', Shei'eb was responsible for collecting the money from members of his bait. But for the following six months he was unable to collect from any member of his bait, including Sheikh Hakim, Shei'eb's cousin and the wealthiest person in bait Asabei' and the Aggary Amar as a whole. Most of them gave the execuse that it was a bad year and they had lost most of their herds. When the money was not collected,

613 682 683 672 558 the victims' families sent their representatives to demand that the money be paid. To face the situation, a meeting of all the Awaqil of Eilat Aggary was called and Sheikh Selouma, the Aqila of bait Eweidha, took the responsibility of notifying the other Awaqil. The meeting was held in [115] the tent of Hemeida (my driver and informant) from the Sanagrah tribe. Each bait was represented by its Aqila with the exception of bait Asabei', from which both Shei'eb and Hakim were present. Since bait Asabei' was the only bait which did not submit to its share of the bloodmoney, the discussion centered around the inability of Shei'eb to collect it. In a gesture which he meant to appear as helping out Shei'eb, Hakim offered to pay not only his share but that of all members of bait Asabei', and followed his offer by handing the money to Sheikh Selouma. After this act which was a complete surprise to Shei'eb, Sheikh Slouma, the Aqila of bait Eweidha, suggested that Hakim should be considered as the Aqila of bait Asabei' instead of Shei'eb, who had demonstrated his inability to collect from members of his own bait. He emphasized the fact that he had nothing against Shei'eb who had legitimately acquired his position as Aqila by means of succession. But he insisted that the survival of the Amar depended upon the fulfullment of its financial obligations to outsiders and that Hakim was wealthy and could pay. Shei'eb did not comment and the rest of the Awaqil nodded indicating their agreement with Sheikh Selouma.

[124] The above is the summary of events that happened before I came to the area, and which were told to me by informants including the parties involved. Since most of these events occurred more than ten years ago,

613 it was impossible to verify the actual facts or to know what exactly
682 happened. But since the parties involved are still alive and since these
683 events are closely related to present-day happenings, the case is still
672 alive in the minds of the parties involved as well as those of outsiders-
558 Naturlaly, each party tries to present the facts in such a way as to
(124) support his own claims. Shei'eb, for example, insists that Hakim had
613 bribed members of bait Asabei' to refuse to pay their share in order to
682 embarrass him and make him appear as unable to perform his duties as
683 Aqila. "Hakim always had his eyes on becoming the Aqila of bait Asabei'," said Shei'eb, "but he had no business becoming the Aqila, so he had to make me look bad to the other Awaqil.... He likes to be looked up to as a big man, but it wouldn't work." While other members of bait Asabei' deny that Hakim had bribed them, they agree with Shei'eb that Hakim is a
156 dishonest man. In fact, Hakim's reputation is so widespread in the area
551 that it has earned him the nickname of "the thief". The nickname was
788 given to him a few years ago when he went to Mecca for a pilgrimage with
685 another fellow tribesman. The latter told the story that while in Mecca Hakim had found a purse with two hundred pounds in it. He was supposed to return the purse to the authorities or it would be considered as stealing if he kept it. Stealing in Mecca is not only a crime but also a great sin which makes the holy trip void for the offender. Hakim told his companion that he had given the purse to the authorities. But later, on their way back from Mecca, the friend found the purse hidden in Hakim's luggage. When the story was known in the area, he was referred to as
156 "the thief". Other accounts of Hakim's dishonesty are told throughout
685 the area, including stories of how he acquired his wealth through stealing
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613 681 mainly a declaration that, that particular person is no longer a member of the tribal segment and that his actions should not in any way reflect upon the tribal segment. The tribal segment referred to is usually the amar since it is only politically corporate group amoung Awlad Ali. The procedure is usually undertaken in cases of habitual offenders whose actions consistently bringing liability to the amar or disgracing it in relations with other tribal groups in the area. Due to the seriousness of the procedure (since it leaves the individual without the protection of his group), it is restricted. First, to announce the barawa of any of its members the amar has to get the unanimous agreement of all adult males of the gorup as represented by their Awaqil of their respective [675] baits. Lately such decisions have to be put in writing. The barawa [593] from the amar does not include the man's father, brothers, or sons. [672] These immediate relatives remain responsible for his actions even if they desire to detach themselves from such responsibility. This is mainly maintained not so much for the protection of the repeated offender but rather for the protection of unsuspecting people who happen to have dealings with him and who would be protected by the corporate responsibility of the man's immediate kin. In addition to repeated offenders, the [626] barawa or the threat of it is used to back the awaqil in their exercise of persuasion to get members of their baits to agree to their decisions, expecially those affecting the amar, like the collection of bloodmoney or the taking of the oath.

A man, on his part, may ask to be given a barawa from his amar. In this case, as shown in the amar papers of Aggary, he has to give good reasons for such a demand. The awaqil of the amar meet and discuss such

and compensation became more and more accepted in settling murder cases among the tribal population. Bloodmoney, or diyya," was established among compensations for injury in general. This scale of compensation is based on the amount of loss of normal activities the injury caused the victim with death being the total loss of such activities. The compensation for homocide is estimated at L.E.400 for intentional killing, and L.E. 300, for unintentional killing. Although reference here is made to "intention," the assessment of that intention and its definition are quite different from the general usage of that term among modern jurists. Among modern jurists, the term refers to a state of mind which implies that the offender willfully and knowingly committed the prohibited act. This means, first, that the person is able to recognize the nature of his act and to distinguish between right and wrong. Secondly, it means that the person was in a position to choose between committing the act and not committing it and took the former path. According to this view, individuals under temporary or permanent insanity, children under the legal age (the definition of which varies from one legal system to another), non-human beings and objects are not capable of having criminal intent, since they are incapable of having a will of their own. Similarly, individuals who are capable of having a will but, because of certain circumstances their freedom of choice was impaired, cannot also have intentions. Intention, then, in the modern legal conception is a psychological quality that connects the offender with the prohibited result or results. It is this psychological connection that differentiates in modern legal systems between murder and manslaughter, between attempted murder and simple assault, between first and second degree murder, and between justifiable

682 and unjustifiable homicide. To examine responsibility in homicide
672 among Awlad Ali and their definition of "intentional" and "non-
673 intentional" killing, let us first present some of the cases collected from the area.

CASE #1: The Case of the Broken Rope

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This is one of the classical cases which is told throughout the entire area. There is some slight variation in the way it is told, but all accounts refer to the fact that Hemeida from the 'Esheibat tribe inherited the right to use a large area of tribal land in which there was an old Roman well not used for a long period of time and which was full of sand. One day he invited the awaqil of his tribal segment, as well as his neighbors, to consult them on how to clear the well, since without it the land was almost useless. They all decided it was a good idea and offered their help. On the day the well was to be cleared, they all gathered around the well. Among those present was Do'ah, a poor member of the 'Esheibat tribe who worked as a paid shepherd for Hemeida. He was watching from a distance when Hemeida called upon him to give a hand. The well, like all Roman wells in the area, is about fifty feet deep and fifteen feet in diameter, and narrows as one goes down the well. To be cleared, someone has to be lowered by a rope to the bottom of the well to dig up the sand. Hemeida's cousin, Ali, agreed to go down, and the gathering looked for a sturdy rope which they found at one of Hemeida's neighbors. As the group was tying Ali to the rope, Hemeida suggested that Ali was too heavy for the rope and that it would be a good idea if a slimmer man did the job. At this point, everybody looked at Do'ah, since he was the thinnest

682 person in the crowd. So, Do'ah volunteered to be lowered down
672 to clear the well. He then proceeded to the well, glanced at the
312 bottom of it, and threw a small stone to see if there was any water left in it. The stone made a faint splash indicating that there were a few inches of water. After that, he examined the rope and the equipment used. Satisfied with everything, he tied the rope around himself and was lowered very slowly and carefully by the crowd at the top of the well. As Do'ah was more than half-way down, the rope broke, and he fell. When the crowd called him, Do'ah answered in a faint voice telling them that he was hurt but that he would be all right. The crowd then looked for a spare rope to lower somebody to get Do'ah but could not find any in a nearby camp. They sent a man to get a rope from the next camp, but by the time a man was lowered to get Do'ah, he was dead; he had drowned in six inches of water.

682 Since the place of the accident was close to the police sta-
672 tion, word got to the officer who, after investigating the case,
[625] ruled it as accidental death. But while the government authorities
[613] were investigating the case, members of the Bait to which Do'ah belonged were proceeding with the customary ways of Awlad Ali to claim bloodmoney for their dead kinsman. The idea was that a life had been lost, and that regardless of the police investigation, someone must pay for it. The question was who. Since the well belonged to Hemeida, Do'ah's relatives insisted that he was the one to pay the bloodmoney. Not denying the fact that someone had to pay for the death of Do'ah, Hemeida insisted that the one to pay was the

682 owner of the rope, since it was the broken rope that had caused
672 the death of Do'ah. The case stayed unsolved for more than two months, a record for dispatching of criminal cases in the area.

682 In the final Mi'ad, the main question was whether or not the owner
672 of the rope was responsible for the death of Do'ah, and therefore
627 liable for the payment of the bloodmoney. After extensive negotiations with the parties involved, Sheikh Selouma, the aqila of Hemeida's Bait, who had also been accepted by Do'ah's family as the Mardi in the case, convened the Mi'ad and announced the settle-
682 ment. His announcement came after reading certain passages of the
672 Koran and reminding the parties that they were all members of Awlad
627 Ali and therefore brothers. He stressed the necessity of all bro-
695 thers having clear hearts toward one another and not allowing worldly disputes to leave any impurities among friends. He then came to the conclusion that there were two things responsible for the death of Do'ah. The first was Hemeida's decision to clear the well, for had it not been for that decision, the accident would not have happened. The second thing responsible was the rope whose breaking was the direct cause of the death. The responsibility here applies only to the rope and not to the owner of that rope. The reason Sheikh Selouma gave for not holding the owner responsible for the death of Do'ah was that the rope by itself is not a lethal weapon for which the owner has to exercise a great deal of caution in lending it. To make the owner responsible for the death of Do'ah would, according to Sheikh Selouma, discourage anyone from lending anything to his neighbor for fear of becoming liable for any harm it might cause.

682 "...It means that I will never lend my cooking pot to my neighbor
672 lest his child trip over it and I would be asked to pay his blood-
627 money."
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So, the bloodmoney was divided into two sections, one to be paid by Hemeida, and the other to be the responsibility of the rope, which meant that the victim's relatives only took home half of the bloodmoney.

683 CASE #2: The Case of the Curious Neighbor

682 This is the case of 66-year-old Selouma whose barley land
578 bordered that of Muftah, a distant member of the same tribe. A
672 small area of rocky land separated the two areas. Throughout the time that Muftah was preparing his land for barley cultivation, Selouma used to sit on the dividing rocks, observing his neighbor work on his land and making jokes about the amount of time and effort Muftah was putting into his land, especially when it looked like a dry year, anyway, and no barley would be cultivated. For more than a week Muftah tolerated his neighbor's remarks. "I always said to myself, 'Don't follow the devil... He is an old man and doesn't know what he is saying.' But that day I could not take it any longer. My wife and children were sick, and I didn't have any money to bring them medicine or even food. I wanted to finish preparing the land because it looked like it was going to rain that day. I went to the area I was working on when Selouma started his jokes. I was mad. I took a small stone and threw it at him to scare him and make him stop. The stone hit his leg. It was a small stone, and I didn't think it would harm him. Actually, he stood on his

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feet after that and left." It seems that later the wound got infected. Six months after the incident, Selouma was taken to the hospital with an infected wound, and three days later he died from that infection. Selouma's son, Ali, demanded that Muftah pay a full bloodmoney (L.E. 400) for the death of his father, since the death was directly caused by the wound inflicted by Muftah. Muftah denied the charges and claimed that the infected wound which caused the death of Selouma was not the one inflicted by the stone. Mediations continued for some time, and when no agreement was achieved, the aqilas of the two baits to which the parties belonged declared that the decision should be made by the oath which Muftah had to take if he insisted on his claims that the wound was not caused by his action. Since the case involved the life of a man, Muftah had to be supported in his oath by fifty-five adult male members of his 'amar, or 'eila. In accordance with the Daraieb, the selection was done by members of Selouma's Bait who also selected the tomb of the saint where the oath would be undertaken. On the date the oath was to be taken, the disputing parties, as well as all the notables of friendly tribal segments who were invited to witness the oath, went to the tomb of the saint. As they started with the procedures, two of Muftah's cousins who were to support him in the oath and his uncle refused to swear on the grounds that they were not sure that Muftah was telling the truth and therefore could not subject themselves to the supernatural hazards of taking a false oath. Attempts by other members who were to support Muftah were made to force the three men to swear, since their refusal meant that the bloodmoney

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was to be paid unconditionally and consequently would cost all members of the amar; but all these attempts failed. At this point, there was no doubt on the part of the attending crowd about Muftah's responsibility for the death of Selouma. The question was, how much had he to pay. The amount requested by Selouma's son was that for "intentional" killing on the basis that Muftah had willfully thrown the rock knowing that it might harm Selouma, especially considering his age.

After long and intensive negotiations with the interested parties, a Mi'ad was set in which it was announced that Muftah had to pay the amount of L.E. 200. In his reasoning, he stipulated that the wound which had caused the death of Selouma, although it was intentional on the part of Muftah, was inflicted by a stone which in itself is not a lethal weapon, and therefore the death was an unintentional one for which the bloodmoney is customarily estimated at L.E. 300. He also stated that in the excitement that followed the death of Selouma, Muftah's pregnant wife had lost the child. The bloodmoney for the still-born infant was estimated at L.E. 100, which was deducted from the amount of bloodmoney that Muftah had to pay.

CASE #3: The Case of the Trespasser

This case occurred during the year of the fieldwork which was the second dry year the area experienced. Rain had not fallen except in a very few places. One of these places was near the small town of Sidi Barrani in which the land belonging to Yadem and his Bait was found. Yadem had sown his barley which at that time had grown to about five feet high. Surrounding the cultivated land

311 was a large area of grazing land which also belonged to the Bait
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613 of Yadem. The area attracted a large number of tribesmen who
233 brought their herds for grazing. One of these was Kuraiem from
311 Awlad Kharouf tribal segment. He brought his wife and child and
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613 a herd of more than two hundred sheep and goats. Although it is not proper for one to cultivate the land belonging to another tribal segment, yet, when it comes to grazing land, no such restriction is imposed. Only the permission of the aqila of that tribal segment is required, and even that is granted so automatically that many tribesmen do not bother to ask for such permission. Kuraiem took this permission for granted and pitched his
233 tent in the grazing land of Yadem and his Bait. Yadem, however,
311 was disturbed because he thought that Kuraiem grazed his flocks in
578 an area very close to his cultivated barley, so close that he feared that the animals might eat the growing barley. When Yadem asked Kuraiem to move a little further and Kuraiem refused, they entered into an argument during which Yadem told him that if he did not move by the following day, he would break his neck. The following morning Yadem went with his brother to see if Kuraiem was still there. Both Yadem and his brother were armed with heavy sticks. As they reached Kuraiem's tent, they hit him with the sticks on
[682] the head. Kuraiem fell on the ground, and they kept hitting him until he was dead.

682 In due course, Kuraiem's family claimed L.E. 400 bloodmoney
672 for the intentional killing of Kuraiem. Yadem and his family rejected the claim and insisted that the killing was unintentional. The
[627] Mi'ad was held, and the two Mardis selected by the two parties

682 agreed that the sticks were not by nature lethal weapons. The
672 latter, according to the tribal law, are only guns and knives,
627 since they give the victims no chance to defend himself. They ruled the case unintentional killing for which only L.E. 300 should be paid.

682 Since Yadem and his brother were arrested by the police for
625 their crime, the payment of the bloodmoney was postponed until
692 the case was settled according to the state legal system. Only half of the bloodmoney was paid and the rest was postponed until the case was decided upon by the legal system and Yadem released.

682 This is obviously a case in which the nature of the killing was
672 decided upon by drawing upon the material aspect of criminal
673 causation. The nature of the weapon used was the major determinant
[411] of the crime. Only guns and knives are defined as lethal; all others are non-lethal by nature, although they might cause the death of the victim. Death caused by a non-lethal weapon is considered as unintentional regardless of whether or not the actor intended the results, while death by a lethal weapon, even without the intention of killing, is classified as intentional killing, as appears in the following case.

CASE #4: The Case of the Threatened Tribesman

613 For more than five years Bait El-Mawi from the Sheibat tribe
628 had been in a continuous state of feud with Bait El-Asi from the Gemeiat tribe. One night, during a Khamasein sand storm when visability was extremely low, Abd-el-Galil from Bait El-Mawi heard a noise outside his tent, and the dogs were barking indicating that a stranger was there. Being sure that someone was approaching

613 the tent and fearing that he might have been a member of the
628 feuding Bait intending to harm him or members of his family, Galil took his gun and went outside to see who was there. He called on the person to identify himself. When he got no answer, he warned him that unless he identify himself, he (Galil) would fire his gun in the air as a warning. After a short period of no
613 response, Galil fired his gun in the air. A moment later, Galil
628 heard a cry coming from the direction of a small hill at the side
682 of the tent. When Galil went there, he found Salem, a member of a neighboring camp, lying on the ground with a bullet wound in his stomach. He told Galil that his wife was sick and that he had come to borrow Galil's donkey to take her to the doctor in the nearby medical center. He had taken the short cut to Galil's tent when he was hit by the bullet which Galil had fired in the air. Galil took his wounded neighbor to the medical center, but Salem died before they reached it.

682 The Mi'ad was held, and Galil and his family had to pay L.E. 400
672 to the victim's kin group. The amount was that specified for in-
627 tentional killing, since the wound that caused the death was in-
673 flicted by a lethal weapon.

CASE #5: The Case of the Startled Shepherd

233 This case involves Idris, a poor member of the Sheresat tribal
[464] segment. He earned his living by working as a hired shepherd for
[619] 'Awwad from Bait Ibrahim in the area of Gharbaniat. During the dry
[312] season, each shepherd takes his flocks to the water wells near the coast and leaves them there for three or four hours to get their fill of drinking water. That afternoon, Idris, waiting for the

233 animals to drink, sat on the edge of the well with his feet in the cool water of the pool completely absorbed in his thoughts amidst the quiet surroundings. Passing by the pool at that time was Mahdi 233 576 from a neighboring tribal segment. Seeing Idris (whom he had not 165 known), he shouted the customary greeting, "Peace on you." Startled by the voice of Mahdi, Idris lost his balance and fell in the deep water of the pool. Mahdi rushed to help him, but the water was too deep, and Idris drowned. Feeling sorry for Idris, Mahdi took the flock and went back to the camp of Idris where he informed the latter's wife of what had happened. A few days later, Mahdi was 682 627 paid a visit by Sheikh Elewa, the aqila of Bait Asabei' and known [613] mardi in the area who informed Mahdi that the family of Idris was demanding the payment of the sum of L.E. 300 for the death of their 682 relative. A Mi'ad was set for the following week. In that Mi'ad, 627 and after Mahdi admitted that it was his greeting that had startled 672 Idris and caused him to fall in the well, the two Mardis represent- 613 ing the two parties agreed that the payment of the sum of three hundred pounds was in order and that Mahdi and his amar must pay it to the victim's family as soon as possible. At first, Mahdi seemed to accept the judgment of the two Mardis, especially when both were prominant members of some of the influential tribal segments in the area. But Mahdi was a poor man, and his amar was very small in number, which made the payment of the bloodmoney almost impossible. 682 Although appeal in the ordinary legal sense does not exist in such 627 a system like that of Awlad Ali, where no judgment is forced upon 672 any of the disputing parties, and where the pronouncement of the 695

682 settlement is usually made after the parties have agreed to it,
627 yet, in certain instances where one of the parties later feels that
672 the settlement was not just or that he was coerced into accepting
695 it, he may ask for a second Mi'ad during which new procedures start
in the case. In the present case, although Mahdi had originally
accepted the judgment of the awaqil, as time passed and he real-
ized that he was unable to pay the bloodmoney, he started to ques-
682 tion the feasibility of the settlement. He discussed the matter
672 with Sheikh Suliman el-Gerery from the Murabiteen tribe of Gerera,
695 a tribe whose members are feared throughout the area for the belief
554 that they have certain supernatural powers. Sheikh Suliman himself
792 is highly respected, and people believe that after his death he will
[776] become "wali" or a saint. After hearing Mahdi's complaint, Sheikh
Suliman told him that the settlement was unjust and told him that he
would do something about it. The following Thursday, Sheikh Suliman
called on Mahdi and asked him to bring his donkey and follow him.
They rode to a small desert town called Bahig where the local market
613 is held every Thursday. On market day, the awaqil of various tribal
517 segments usually gather in front of the general store in the town
571 drinking tea and chatting until their sons or the younger members
443 of their families sell the sheep and buy the necessary items. Every-
576 one passing by the gathering is expected to greet the gathering, get-
ting off his donkey as a sign of respect to the prominent people.
[689] Failure to greet a fellow tribesman is considered a serious offense
liable to a fine of more than L. 50 and ten goats in certain cases.
[673] It is considered a very serious crime. One informant once told me,
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One informant once told me, "If you don't greet me, this means that you hate me, and if you hate me, there is no limit to the kind of harm you can do me and my family. One who hates you can kill you, and none can walk safely anywhere if he fears that he will be killed."

As Sheikh Suliman and Mahdi reached the general store, everyone was gathering there as usual, including the two awaqil who were involved in the original settlement. Sheikh Suliman told Mahdi not to dismount his donkey and not to say the customary greeting as they passed by the gathering. When they passed the gathering, everyone stood to greet Sheikh Suliman who ignored them and left with Mahdi. No one believed that Sheikh Suliman, who should be the guard of the tribal tradition, should commit such an unforgivable violation of the norms of the people. The next morning the whole area was talking about a big Mi'ad to "take the right" from Sheikh Suliman and Mahdi, who had insulted the gathering. The Mi'ad was held a week after the incident. During the Mi'ad, Sheikh Suliman was asked to explain his behavior, and his answer was, "How do you want me to greet all those people who were sitting in front of the store? There were more than thirty men in that gathering, and I was afraid that if I said the customary greeting, I might have startled some of them causing them to harm themselves, leaving me with the payment of so many bloodmoneys." Immediately, the attendants of the Mi'ad knew what Sheikh Suliman was referring to, and that his action was to prove that the settlement reached in the case of Mahdi was wrong and that it set a very dangerous precedent which would cause people to avoid greeting one another, "and hatred will prevail among brothers and nobody will be safe in his own home."

682 negotiations between the parties involved were conducted by their
627 respective awaqil, a Mi'ad was set, and the settlement was an-
682 nounced. According to the terms of the settlement, three factors
672 contributed to the death of Hussein: the goat, whose activity was
627 directly related to the death by causing the gun to fire; the host, who had chased the goat, causing it to run over the gun and fire it; and the guest, without whose negligence in leaving the gun loaded the accident would not have happened. The bloodmoney was divided into three equal parts, one of which was to be paid by Awad, the host, the other to be paid by Ali, the owner of the gun, and the third part to be attributed to the responsibility of the goat and therefore would not be paid.

CASE #7: The Case of the Adulterous Wife

684 For more than a year, rumors spread in the area of Burg El-Arab that Ghenewa's wife was having an affair with Goma'h, a friend of her husband and a member of a nearby camp. Ghenewa was operating a small store and was also involved in smuggling goods from Libya; both required him to be away frequently and for fairly extensive periods of time. According to the rumors, as soon as he left, his wife would put a white cloth on the laundry line as a sign indicating to Goma'h that the husband had left and therefore the former could come and visit her. When the husband heard the rumors, he was furious and decided to test his wife. He pretended that he was going to Alexandria as usual, went to the train station, waited until the train had left, and then returned to his tent. As he entered the tent, he found his wife and his friend in a compromising situation. Before
[682] he could do anything, the friend grabbed a kitchen knife and attacked

684 682 the husband, who reached for his gun and fired at Goma'h. Three days later the latter died in the hospital from the gun wound.

684 682 672 The case was investigated by the police and brought to trial, but the case was dismissed as justifiable homocide by reason of self defense. The tribal proceedings, however, required Ghenewa to pay the bloodmoney for intentional homocide, since the weapon used was a gun. Out of the L. 400 bloodmoney, the sum of L. 20 kabara for committing adultery with the wife was deducted. None had questioned the right of Ghenewa to kill Goma'h in the process of defending himself.

671 672 In his essay on "The Early History of Malice Aforethought" in English law, Maitland discussed the "utter incompetence of ancient law to take note of the mental elements of a crime" (1911:327). This statement seems to apply to certain aspects of the tribal law of Awlad Ali. If one causes the death of another, even accidentally, he is liable to

671 672 171 compensation. This attribute is not restricted to Awlad Ali law, for it has been documented by a number of other studies. Peristiany found this to be the case among the Potok (1954), and Dundas documented it among the Kikuyu (1921). In his analysis of injury and liability among the Barotse, Gluckman maintained that "whatever the motivation of the killer or the circumstances surrounding the deed, bloodmoney has to be paid if a member of one grouping of kinsmen was killed by a member of some other group. The mental element seems to be irrelevant. What is important is that "murder" is committed within social relationships where blood compensation is due (1963:205). Similarly, Howell gives us one of the most comprehensive accounts of the Nuer "rule of law" and

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672 the irrelevance of intention in establishing liabilities for homocide
171 or injuries (1954).

672 The neglect of intention in assessing liability in cases of homo-
682 cide is evident in the cases presented above (Cases 1,2,4,5 and 6), where compensation was paid although there was no intention established on the part of the offender.

[192] Awlad Ali use the Arabic word "katl" to refer to any killing. This is different from the word "mut" which means death by natural causes. They further differentiate between "katl 'amd," or intentional killing
682 and "katl khata," or unintentional killing. Although reference here is
672 made to "intention," yet, from the above cases it is evident that the
673 basis of establishing that intention is from the type of weapon used in effecting the death of the victim. Intentional killings are those caused
[411] by a lethal weapon. Lethal weapons are defined as guns or knives. Death caused by a non-lethal weapon, no matter what the intentions of the offender, is defined as non-intentional, even when the circumstances of the act indicates the actual existence of an intention on the part of the offender to cause the death of the victim (as in Case #3 above). The assumption is that the use of lethal weapons, such as daggers or guns, implies intention and possibly a certain degree of premeditation, since these weapons have no other important use. Moreover, the probability of death by a lethal weapon is much greater than from other non-lethal weapons. These give the victim a chance to defend himself, a chance which he does not have in the cases of killing with a gun or dagger. In other words, Awlad Ali, in assessing responsibility for homocide, "operate with a legalistic psychology in which intention is is presumed from action" (Gluckman, 1963:207).

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•672 In practice, Awlad Ali do look at actual circumstances to assess the intention of the offender. Although compensation is always required, the readiness of the victim's kin group to accept a financial settlement and the final amount to be paid in a given situation is affected by the presence or absence of an intention on behalf of the offender. In assessing the actual intention of the offender in each case, the mediators rely on the circumstances of the crime as well as on the past history of the relationships between the offender and the victim. Although this actual intention of the offender does not change the payment of bloodmoney, the deceased's kin are more agreeable to the acceptance of the financial settlement if the killing is unintentional than if it is intentional and the possibility of revenge is much less imminent. Unintentional killing, regardless of the weapon used never results in blood feuds. The possibility, on the other hand, is much greater in the cases where the circumstances of the offense indicate an intention on the part of the killer to take the life of the victim. It is for this reason that the right of [678] hazala, or refuge, discussed in an earlier chapter, is resorted to only in the case of intentional killing. Of all the cases described in the chapter only in the case of the trespasser did the killers' kin group seek refuge by moving to another area where they were protected until the dispute was solved by another neutral tribal segment. It is important to note that killing in the above case was not done by a lethal weapon but by sticks, and as such was defined by the tribal law as "unintentional" as far as the formal amount of compensation required was concerned. Not all cases where the intention of the offender to kill [671] the victim is clear carried with it the threat of revenge. The tribal law takes into consideration certain mitigating circumstances, such as the role of the victim in initiating the act of the offender.

the role of the victim in initiating the act of the offender. In the case of the adulterous wife (Case #7), the intention of the husband to kill the wife's lover was clear from the evidence; yet, the husband's kin group never attempted to take refuge, and the victim's group was eager to settle the case with the least amount of publicity. On the other hand, killing in circumstances that offend the tribal standards of chivalry, like killing from ambush or during the night, are the most difficult to solve and pose the greatest chance for retaliation.

Although the traditional amount of compensation is not determined by the actual intentions of the killer, but rather by assumed intentions as deducted from the type of weapon used in causing death, yet, the final amount paid is usually determined by such intention. The actual intention works as the basis for bargaining between the victim's kin and the kin of the killer. Kin of the victim of an intentional killing are less likely to agree to any reduction of the amount, and with the threat of retaliation or revenge present, the killer's kin are bargaining from a weaker point. This is not the case in unintentional killings or where the victim's behavior instigated the reaction of the killer. In such cases, the victim's group is more willing to accept a lesser amount of compensation, and the killer's group, while not in a good bargaining position, at least are not under the threat of revenge. And since they do not resort to the right of refuge, their daily activities are not disrupted. In this case, they could sustain the bargaining activities for a relatively longer period of time. Also, there is usually a strong pressure on the victim's group to accept reduced compensation in the case of unintentional killing from the rest of the tribal members. If

682 they refuse to accept reduced compensation, they are viewed as unreason-
672 able by the rest of the groups in the area. One way in which such pres-
[626] sure is brought to bear upon the victim's acceptance of reduced compansation
682 is in the mi'ad, or the public hearing, in which the settlement achieved
672 is announced. The common practice is for the killer's group to agree to
627 pay the full amount specified by the traditional scale for compensation (L.E. 400 for killing with a lethal weapon and L.E. 300 for killing with a non-lethal weapon). Then, in the final mi'ad in which such agreement is achieved, a number of important members of non-involved tribal segments are invited to the mi'ad. During the mi'ad and immediately following the announcement that a settlement has been achieved and that the kin group of the killer has agreed to pay the traditional bloodmoney, the mardi or any one of the attendants to the mi'ad asks the victim's group to defer part of the payment in honor of important members of the tribal segments pres-
682 ent at the meeting. Sometimes a portion of the payment is forfeited in
672 honor of the tent or the women of the household who prepared the food or even for the blessing of one of the saints in the area. In the case of the curious neighbor (Case #2) above, out of the original amount specified for the death by non-lethal weapon estimated as L.E. 300, only L.E. 100 was actually given to the victim's kin group. In addition to the L.E. 100 deducted because of the death of the unborn infant of the offender, another hundred pounds was deducted in honor of certain important members who attended the gathering. It is interesting to note that the L.E. 100
[683] is compensation for the loss of the use of a leg in the formal scale of compensations for injuries as will be shown shortly. No such reduction in the amount of bloodmoney was done in the case of the trespasser where

Although the weapon used was not lethal and therefore was classified as an unintentional killing, yet the nature of the crime and the obvious intention on the part of the killers made reduced payment difficult to achieve.

Another way of reducing liability and the amount of money paid in cases of unintentional killing is by taking into consideration all the intervening variables that contributed to the death of the victim and asking them to share the blame. The working of this principle is illustrated in the case of the broken rope where the rope was assigned half the responsibility for the death of the victim. It is also present in the case of the careless guest where the responsibility was divided three ways with the host paying one third, the owner of the gun paying another third, and the goat sharing the responsibility for the rest of the bloodmoney. It is interesting to note the difference in the responsibility to the owner of the gun in the above case and the owner of the rope in the case of the broken rope. The owner of the rope was not held responsible for the death caused by his rope, the same way the owner of the goat in the case of the careless guest was not held responsible for the actions of the animal. Both the goat and the rope are not dangerous things by themselves for which a certain degree of care in handling is required. If such normally harmless things cause injury or death to a person, the owner is not held responsible.

The situation is quite different in the case of the gun and the responsibility of its owner. By nature, the gun is a weapon of death, and for that reason the tribal law has required certain precautions in its use or handling. Among such precautions is the requirement that a guest,

as soon as he settles in the host's place, should unload the gun. In addition to reducing the possibility of the gun being accidentally fired and harming someone, this act expressed the trust of the guest in his host and signifies the ability of the latter to protect his guest against any harm. A person visiting another does not need his gun for protection and therefore must unload it. If the owner of the gun fails to take this customary precaution and leaves his gun loaded, and because of that failure the gun causes the death or injury of a person or even damage to property, the owner is held responsible for that result. The same rule applies to other deadly weapons, such as knives or daggers, as well as to animals which are dangerous by nature, such as dogs. Each tent in the area has a dog. Starting the first weeks in the puppy's life, he is trained to guard the tent and to bark at the approach of any stranger. It is also trained to attack any intruder who comes within fifty yards of the tent unless accompanied by a member of the tent. When one goes to visit another, he usually stays away from the tent until someone from the tent hears the dog barking and comes out to get the guest. Most dogs would not attack a person as long as he is the safe fifty yards away from the tent. Occasionally, a dog goes behond the safe distance and b ites an individual passing by or a guest waiting to be let inside the tent. If the injured person is able to prove, usually by taking the oath, that he was more than fifty yards away from the tent at the time he was attacked by the dog, the dog's owner is liable to the victim for the injury inflicted by the dog. If, on the other hand, evidence shows that the victim was bitten by the dog while being less than fifty yards away from the tent, then there is no responsibility on the part of the dog's

683 owner. This means that an element of neglect has to be proven on the part
672 of the owner of either a lethal weapon or a dangerous animal before he
231 is held responsible for the fdamage they cause. But whether dangerous or not, the role of such objects or animals, in causing the death or injury of the victim, is taken into consideration in assessing the exact amount to be paid as compensation.

682 In assessing the intention and consequently the amount of the tradi-
672 tional bloodmoney to be paid, the behavior of the offender is judged according to a traditional standard of reasonableness. In the case of the curious neighbor, Muftah, in his attempt to evade the payment of the full bloodmoney, presented an elaborate account of his neighbor's actions including the provocative statements that the latter had said, the jokes, and even the insults he had directed against Muftah. His attempt was to show that throwing a small rock at his neighbor was not an unreasonable behavior considering the provocations of that neighbor whose behavior was itself unreasonable. Although the victim's behavior was unreasonable, the response of Muftah to the provocations of his neighbor was also considered as unreasonable. He could have followed the traditional means of asking a third party to interfere and prevent the neighbor from continuing his insults. Instead, Muftah took the direct and unreasonable response which eventually led to the death of Selouma. It is that element of reasonableness that led to the reversal of the original settlement in the case of the startled shepherd (Case #4). When considering
682 672 629 a certain behavior in the context of reasonableness, the mediators draw not only upon the immediate facts of the case under consideration, but also upon the careful inquiry into the long history of interrelations

682 between the parties involved. The relative position of both the of-
● 692 fender and the victim and their relationship to one another is taken
629 into account. What is reasonable behavior in one case may not be so in another. Pst disputes are taken as indications of the present situation, although they may not be directly related to the present dispute.

672 It is possible to say, then, that Awlad Ali recognize two types of
673 intentions: an assumed intention deducted from certain material aspects of the act itself, like the type of weapon used in causing the death of the victim, and an actual intention which is quite similar to that utilized in modern jurisprudence in the sense that it pertains to a state of mind on the part of the offender that connects him in a special way with the prohibited results. The assumed intention works to set the initial guide for the traditional scale of bloodmoney. It sets the basis upon which compromise could be achieved. Actual intention, on the other hand, determines the actual course the specific case takes as well as the final amount of money paid as a settlement.

683 the settlement is announced. This deduction is determined by the same
683 factors involved in the case of homicide, such as the relationship be-
672 tween the parties involved and the presence or absence of an intention
on the part of the offender to cause bodily harm to the victim, as well
as the role the victim played in provoking the actions that led to his
683 injury. Injuries sustained during a fight are not as serious as injur-
672 ies sustained by ambushing the victim. In the latter case, the victim
673 had no chance to defend himself. Also, the number of people involved in
the actions that led to the injury enter as a variable. If more than one
individual attacks a victim, it is considered more serious than a man-
to-man fight.

3:Evans-Pritchard E-4, 5 (1942-1944) 1949 MT9 Libyan Bedouin MT9
(1837-1942) Sanusi

stretch of tribal territory, move during the rains to the same grazing grounds, use the same wells during the dry season, and cultivate adjacent strips of arable. The members of a *bait* have a lively sense of solidarity, and this is most evident in fighting and feuds. It is their common duty to avenge a slain kinsman and they share the *diya*, indemnity, should they accept it in the place of a life. They are jointly responsible for a wrong any one of them may commit. The smaller *biyut* are often identical with camps, usually from five to ten tents, in grazing grounds, and several closely related *biyut* camp near together in the vicinity of springs and wells in the summer, their combined camps then amounting sometimes to over a hundred tents.

What has been said above about tribal structure applies only to the free tribes and the larger client tribes living on their own land. The client tribes which are split up and scattered throughout Cyrenaica are not tribes in a political, but only in an ethnic, sense. It will be found that in any of the main tribes stranger groups, sometimes of client origin, have attached themselves to the clan dominant in the tribal area and through some fiction, myth, or fraud, have grafted their branch of descent on to the genealogical tree of this clan. The Bedouin use the word *laf* to describe this process and they say that kinship established in this way may become as strong as kinship of blood.

The structure of a tribe is expressed in terms of the lineage system of the clan dominant in its territory, the tribal segments being associated with branches of descent from the ancestor of this clan. The primary tribal sections are identified with lineages descended from some of this ancestor's descendants in the male line; the secondary tribal sections are identified with lineages descended from more of his descendants farther down the line of descent; and so on till the smallest territorial segments and the smallest lineages are reached. Thus a lineage considered as a branch of a clan consists of all those persons who trace their descent through the male line to a common ancestor, but it can also be, and in speech often is, conceived of politically as an agnatic group of this kind together with stranger and *Marabtin* accretions which occupy its territory and make common cause with it in disputes with other tribes or segments of the same tribe.

A simple example is given in illustration of tribal segmentation

5: Peters E-5 (1948-1950) 1967 MT9 Libyan Bedouin MT9
Cyrenaica

degree and is ephemeral, so that the opportunity for the development of trade relations is absent.[1] Save for straying animals, a section has no urgent need to seek relationships with others, as long as the rainfall is sufficient to permit the exploitation of local resources.

The tertiary section is also regarded as the corporate group *par excellence*, in which ' the one word does for all '. Corporate identity is conceptualized as ' one bone ' or ' one body '. An offence against one of its members is held to be an offence against all; if one of its members is killed ' we all lose blood '. When one of its members commits homicide the responsibility falls on all equally. Blood money, when received, is shared by all save for a special portion reserved for the ' owner of the blood ', the nearest agnate of the victim. In opposite circumstances, all adult males accept the responsibility of contributing an equal share to the blood money. Rules of membership, simple in their brevity, express graphically this corporate identity: ' You must strike with us and be struck with us; you must pay with us and receive with us.' The group also bears a name, and there is never any doubt about the affiliation of any tribesman. That group of men—known as the *'amarā dam*—who are agreed on the obligation to exact vengeance, to pay blood money when necessary, to engage in common defence, and to accept the possibility of death in vengeance, is a fixed and clear-cut group, not one whose membership has to be calculated by reference to degrees of kinship in regard to a specific situation, as appears to be the case among other peoples.

Homicide within the *'amarā dam* brings about an impasse in relationships. A blood-money payment is out of the question since the acceptance of blood money by one part of a tertiary section from another of its parts is tantamount to a statement of split. Only in conditions where relationships within the lineage have developed to the point of political severance is it anticipated that a blood-money payment may be demanded; but this problem is not the same as that at present under discussion. Bedouin say that blood money cannot pass within the *'amarā dam* for those making the payment would be the persons receiving it. This is spurious reasoning, since the ' owner of the blood ' is awarded more than any other members of the group as it is, and arrangements could obviously be made to pay him separately. Blood money is out of the question because it distinguishes relationships between people as belonging to two distinct political communities, and not because of any difficulty of distribution. In Bedouin thinking, an injury to ' the one body ' is an injury to all its parts. Blood-money payments by members of a corporation to one or more of its members is a contradiction in terms. In the same way vengeance is also excluded, for this merely doubles the original loss. A reprisal exacted in hot blood is always a possibility, but this is not referred to as *thār*, vengeance. Even if, at a later date, the closest kinsman of the victim should slay the offender, the act would not be referred to as *thār* and any connexion with earlier homicides would be denied.

Stultified in the field of political action, there is little else that can be done. Expulsion is a possible course of action—and expulsion has occurred. Records show, however, that exile is almost invariably voluntary.[2] Moreover, exile is terminated as

[1] Many sections trade fleeces for dates with the folk of distant oases, but the sections do not trade among themselves.

[2] I recorded one case of a man who was expelled from his group and the tribes around were warned that the rules of sanctuary were not to apply to him. He is said to have died from grief and hunger. The reason given for such drastic action is that he killed

682 body had been dragged. He followed the footsteps of the
674 son as far as the cistern, where he again saw a tiny spot of fresh blood on one of the stones. From that point donkey-tracks led straight to the son's tent.

By nightfall the son was securely lodged in the police post; and local public opinion was seething with fury, firstly at such a dastardly deed committed presumably for the sake of the old man's money, and secondly because it reflected untold discredit on the rest of the tribe. The murderer, who was a big powerful man of about thirty standing nearly six feet in height, lay in prison awaiting trial. After a few days he was admitted to hospital, where he completely collapsed and died of fright a fortnight later.

[203] Rumours then began to spread that possibly the murderer had only acted in accordance with the wishes of his brothers, who were all conspiring to get rid of the old man, in order that they might share out his possessions. This could not be proved, and appeared unlikely from the
[626] evidence. However, public feeling against the whole family ran so high that it was feared that more horrors might follow; but although no open action was taken against the family, no opportunity was missed of having a dig at them in some way or another.

682 A very wealthy sheep merchant, who was a distant
674 connection of the family, and heartily ashamed of them,
691 brought an action for debt against one of the murderer's
626 brothers. He produced an I.O.U. for £2 dated twelve
686 years before and signed by the murdered man, claiming (according to custom) that the son now in court as defendant had inherited his father's liabilities together with
• [672] his assets.

This sheep merchant was known personally to the writer, who was also aware that a month previously he had made a profit of £900 on a very clever bit of dealing in the West. The collection, after an interval of twelve years, of this paltry debt of £2, owing from the deceased father

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

of the present defendant seemed—for a really wealthy man—to be pointless and futile. The merchant anticipated this objection by hastening to add that the receipt of the actual cash did not interest him in the least; but that he had been wondering how he could shew his disapproval of the defendant's family in some way, and had gone carefully through all his old papers and receipts with this end in view, and had triumphantly discovered the bill of debt now produced in court.

Bedouin Law and custom sometimes accept right to bloodmoney in all sorts of circumstances, when other law would recognise no claim. For example, the principle is accepted that a life lost in prison must be paid for by the informers whose information resulted in the imprisonment of the deceased. It is entirely immaterial whether the information so given to the police was wilfully false or intentionally misleading, or whether it was merely subsequently found to be incorrect. Even if the information had been true and correct in every detail, the informer is still blood-guilty from the Ourfi standpoint, although in actual practice any such claims for bloodmoney would probably be considerably modified.

Other claims for bloodmoney are also recognised occasionally, in cases of obvious accidental death, or death by misadventure or Act of God, when the interpreters of Bedouin Law cannot get away from the main principle that a life lost must be paid for. The difficulty in these cases is to determine who shall pay for it; and the lawsuits usually end in a clever compromise, in which their essential principles are duly observed, but their judgments are mitigated and modified by leniency and commonsense. The following example, which occurred recently in Mariut, will illustrate this.

A certain Arab called Ali Abu Bukr had inherited from his father large cultivation rights in the desert; and in the middle of this land was an old cistern for the collection of rain water. It had not been used for years, and was silted

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

671 up with drift sand; and as it was some miles from the
•672 nearest permanent water supply, the owner of the cistern
682 decided that it was well worth clearing out, with a view
312 to catching and conserving the next rainfall.

Accordingly he summoned all his kinsfolk, and propounded his proposition, to which they agreed. Other Arabs occupying neighbouring rights suggested that it was a very good idea, probably with a view to a simplified water supply for themselves.

671 An Arab from the neighbouring tribe called Ahmed
672 had frequently acted as shepherd and odd-job man for
682 Ali; and it happened that, when Ali and all his kinsfolk were assembled at the cistern, Ahmed chanced to be passing. Ali hailed him, and asked him to come and lend a hand. So Ahmed joined the crowd at the well, and assisted in getting ready the ropes and other tackle to be used.

[312] The cistern, constructed after the usual Roman pattern, was about forty feet deep, fifteen feet in diameter for the first twenty feet or so, and from there narrowed down to six or seven feet, with footholes cut in the side for the last half. One of Ali's relatives had agreed to be let down with ropes and to start cleaning out the mud and sand from the bottom. However, when the rope had been tied round his middle, and he was just going to be swung in mid-air and lowered to the ledge at half-way, his nerve suddenly failed him, and he refused to start.

Subsequent evidence was confused at this point as to exactly what happened; but it seems that one of the crowd noticed Ahmed standing with the rest, and remarked that he had had considerable experience in well digging, and suggested that he should go down. Accordingly Ahmed flung a stone down the well, and a faint splash at the bottom indicated that there were a few inches of water in it. He then organised a sort of tug-of-war among the men standing by, to test the strength of the rope. Satisfied on this point, he had the rope tied round him, and he was

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

lowered very slowly and carefully by the crowd at the top. Here again it is difficult to ascertain exactly what happened, as the evidence was again contradictory. Apparently, when Ahmed reached the ledge at half-way, he fumbled about in the dim light for the foot holes; and just at this psychological moment the rope broke.

The ten men holding the rope at the top collapsed one on the top of another; but when they had recovered their presence of mind, they shouted down to Ahmed, to ask if he were all right. A faint voice from the bowels of the earth replied that he had fallen heavily on a stone and had had a nasty knock, but that he would be all right in a few minutes.

They then produced a spare rope for another man to go down and get Ahmed up; but they discovered that the only one they had to hand was too short by several feet. A man was sent post-haste on a pony to get another rope from the encampment a mile or so away, and when he returned after a quarter of an hour, volunteers were quickly forthcoming to go down and retrieve Ahmed. On reaching the bottom they found that the unfortunate man, either stunned by the fall or overcome by foul air, had collapsed flat on the bottom of the well, and had been drowned in six inches of water. They hauled his body up to the surface, and Ali, terrified that he might be held in some way responsible, counselled all present to bury the dead man then and there, and to say nothing about it. However, news quickly spreads; and the same day an informer came to the police post and reported the matter, and Ali was arrested and subsequently sentenced to three months' imprisonment with labour by the present writer, for failure to notify a death under unusual circumstances. (Incidentally this did not constitute an offence under Bedouin Law, but was a contravention of the Police Code and was punished as such. Hence the apparent interference in a purely Bedouin concern.)

While Ali was still serving his sentence, Ahmed's rela-

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

671 tives lost no time in taking legal proceedings at the Ourfi
672 court to claim bloodmoney from the owner of the cistern;
682 and on Ali's release from prison a very long and excessively
694 tedious lawsuit began.

The principle that a life had been lost and must be paid for was accepted without question by the court from the outset, in spite of the police enquiry, which is the local equivalent of a coroner's inquest. The enquiry had established beyond any shadow of doubt that death had been caused by misadventure, and that Ali was absolutely innocent, not only of any intent to kill, but also of any negligence whatsoever. Any other coroner's jury in the world would have returned a verdict of accidental death, expressed sympathy with the relatives, and absolved all concerned from blame; and there the matter would have ended.

671 Ali, who had already undergone three months in durance
672 vile—which, to a wandering child of the desert, must be
682 particularly galling—so far forgot any tribal instruction he might have had as to repudiate vigorously any responsibility either for the accident or for the restitution of the death in the form of bloodmoney. His family also, who would naturally have to share the payment, did their best to confound the issue by lodging a counter claim. They protested that the actual rope that broke was not theirs, but belonged to a third party, and that neighbouring tribes, who had approved of the project and who stood to benefit by the cistern when it was cleaned out, were conjointly responsible with themselves for any payment due.

The case dragged on unsatisfactorily for some months; the neighbouring tribes swore that no agreement existed whereby they should benefit by the cistern when completed; the question of the ownership of the rope was dropped; and eventually Ali and his family were ordered to pay a reduced scale of bloodmoney to the family of the deceased.

683 Sometimes these bloodmoney cases, so far from being
672 dramatic or nauseating, are actually rather amusing.

BLOODMONEY—WESTERN DESERT 67 672

The plaintiff was an Arab called Salem Ibrahim, who 683 brought an action against a man of another family of his [694] tribe called Ali. The plaint was as follows. Seven years ago Salem's father Ibrahim, a man then about sixty years old, was sitting on a wall near a patch of cultivation belonging to Ali, and watching Ali working on his land. Some dispute arose between them; and, angered at something that Ibrahim had said, Ali picked up a large stone and flung it at Ibrahim. The impact broke the old man's 683 leg; the case was reported to the police; Ali was arrested 682 and imprisoned; and Ibrahim was taken to hospital, where 672 he shortly afterwards died. Ali was thus left in prison, and the case could not be proceeded with from the Ourfi standpoint until he came out. On his release, therefore, 683 the case was to be brought up for settlement, and the plaintiff to claim bloodmoney for his father's death. 682

Meanwhile, however, plaintiff related how his own 694 family had wanted to get the case cleared up and how Ali's 672 family had also approached them with the idea of extracting Ali from the clutches of the police, so that the case could be tried by an Ourfi court, and a judgment which would be intelligible and acceptable to both parties could be given by their own sheikhs.

Accordingly they agreed together that the plaintiff's family should go to the police, declare that the whole case was a mistake from beginning to end, and that the old man Ibrahim had fallen off the wall, and that nobody had thrown a stone at him. A document to this effect was drawn up, signed and sealed by the notables of Ibrahim's family, and solemnly presented to the police. The evidence seemed so genuine that Ali was released from prison, with implied apologies for wrongful arrest. On his release from prison Ali saw his opportunity, and by some means obtained possession of this document signed by Ibrahim's family.

When the case first came up for trial by Ourfi court, Ali denied throwing the stone, repudiated all responsibility

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

in the case, and produced this document signed by Ibrahim's family to the effect that Ibrahim *fell* off the wall and broke his leg. How then could he possibly be implicated in the case?

The assessors of the court went carefully into all the evidence and eventually agreed that the matter should be decided by the oath. They demanded that Ali, backed by twenty-five men of his own tribe, chosen by Ibrahim's family as men of their word, should swear on the tomb of Sidi Shar el Ruh the following oath: "By Allah the Great and by the Truth of this Holy Sheikh, I swear that I neither threw a stone at Ibrahim, nor broke his leg." They further decreed that if Ali himself, or any one of the twenty-five men chosen to back him in his oath, failed or refused to swear as required, the case for the defence would be null and void, and that bloodmoney would be required in full from Ali's family.

On the date appointed two or three sheikhs of the court were detailed to go to the tomb, to meet the defendant with his twenty-five backers, and to supervise the taking of the oath. The parties duly arrived; but when the oath was just about to be taken, three men of Ali's backers refused to swear, declaring that on the contrary they were ready to swear, if required, that Ali *had* thrown the stone, and was responsible for Ibrahim's death. The case for the defence thus fell to the ground, and the parties were warned to appear at a future date, when the case would be completed. At the next meeting of the court, Ali's liability to pay bloodmoney was accepted in principle, but there were divergencies of opinion as to the amount to be paid. Then followed a delightful example of casuistry typical of the Bedou mind.

The assessors of the court felt that, in the first instance, Ali had never intended to kill poor old Ibrahim, and that his crime fell very far short of intentional homicide. Also, it had happened seven years before, and, all said and done, time had healed most of whatever ill-feeling there ever

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

had been. Besides, Ibrahim was an old man when it happened, and he would have to have died before very long in any case. Moreover, the sheikhs in their heart of hearts considerably admired the acumen displayed by Ali in getting hold of that document. So they decided privately among themselves that on the whole half the full bloodmoney, or £150, would meet the case. On no account, however, could they give in open court the above reasons for lessening the sum to be paid. They proceeded to listen patiently to more evidence, and eventually gave their considered judgment as follows:

"Defendant Ali is required to pay the full bloodmoney of £300. *But* in view of the fact that, when the police came to Ali's tent to arrest him seven years ago, in the excitement and commotion caused by the police patrol, Ali's wife gave birth to a premature boy child, and that this boy subsequently died, therefore the sum of £100 will be deducted from the total to be paid, for the sake of the dead baby. Also, as it cannot be proved conclusively that Ibrahim died simply and solely as the result of the stone thrown at his leg, and as it may be conceivably possible that other external causes contributed to his death, for this reason, therefore, another sum of £50 will be deducted. Hence the amount to be paid is £150, of which £50 must be paid after this coming barley harvest, with a similar sum after the two following harvests."

Amateur lawyers are not popular, and more often than not darken counsel without understanding.

An Arab called Salem had some land, and he employed two men of the Hawita tribe as shepherds and harvesters. One of these men was from the Nefoofa family of the Hawita, and the other was from a family called the Magai. These two shepherds worked peacefully together, and their respective families were friendly, until one day an Arab of the Gottaan tribe called Yadam Saadi drove his flocks and his animals on to Salem's land, and began to pitch his tents. These two shepherds saw this going on from afar, and

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

682 672 came up to drive him and his animals away. Yadam refused to move, and threatened violence if they attempted to eject him forcibly. So the two shepherds, who were responsible to their employer for the land, went for him simultaneously—the Nefoofa shepherd with a thick stick, which he brought down with all his force on Yadam's head, and the Magai with a large stone, which he hurled as hard as he could, and which caught Yadam in the chest over the heart. Yadam received both these blows simultaneously, collapsed on to the ground in a crumpled heap, and died soon afterwards.

682 672 693 695 Yadam's family then brought an action against the Nefoofa and Magai families conjointly, claiming bloodmoney. The Nefoofa produced an amateur barrister of their own family called Abd el Gelil, who proved (entirely to his own satisfaction) that many minor assaults were continually taking place, when people were hit on the head without death following immediately as the result of the blow. He therefore contended that it must have been the blow from the stone thrown by the Magai which had really killed him. The Magai adopted a similar line of argument, and the case remained at a standstill for nearly two years.

Eventually the court effected a compromise, and awarded the bloodmoney, to be paid equally by the Nefoofa and the Magai in three yearly instalments of £50 each. The Magai paid up their £50, and the Nefoofa barrister—a particularly bumptious individual from the Nile Valley—lodged a protest against the decision, claiming that the court was not properly constituted and was not competent, that the sheikhs were biassed, and a hundred and one reasons why the Nefoofa should not contribute their share.

He was eventually made to understand that the Nefoofa would have to pay, and that if there were any more trouble from him, his own property would be seized as part-payment. Accordingly Abd el Gelil travelled round the Nefoofa encampments, ostensibly to collect sums due from

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

the different families. A year later the Gottaan brought up the case again, acknowledging the receipt of £50 from the Magai, but protesting that they had still not received anything from the Nefoofa. On an enquiry being held, a representative collection of infuriated members of the Nefoofa family came to court, protesting that Abd el Gelil had already collected their payments, and that if he had not handed over the money, their responsibility at any rate had ended for the moment. 682 672 693 695

It subsequently transpired, when Abd el Gelil was with difficulty got hold of and brought to court, that he had collected about £50, but claimed this sum as his own personal travelling expenses for collection. Then followed another lawsuit, in which the Nefoofa family sued their self-appointed lawyer for mis-appropriation of tribal funds. The details of this new case, and those of the original suit, were then re-capitulated and muddled up together, to the complete bewilderment of the writer and the entire satisfaction of the Bedouin assessors. [685]

Mention has been made of the extra £100 (£400 instead of £300) usually paid among the Gawabees tribe as the price of a life. It seems, however, as though there are exceptions to this rule; and the following case seems to shew that the payment of "Sanaa" depends on a variety of circumstances. 682 672 [435]

A family called Sirdani had had a bloodfeud with another family of the Gawabees called Sayed, one of the former having killed one of the latter some fifty years ago. The two families had been living in totally different districts, and for years had not come into contact with each other, and so the feud had been allowed to continue. 682 628 672

In the spring of 1921 a man of the first family, about forty-five years old, called Mirtah el Sirdani, left the Wadi Natrun for the Nile Valley to buy some sheep from the Fellaheen, taking with him his old mother and a small boy, to help him bring them back across the desert to the luscious grazing in the wadi swamps. He arrived at the

8: Kennett G-5 (ca. 1921) 1925 MT9 Libyan Bedouin MT9

682 Cultivation, bought his sheep, and started off westwards
628 to the wadi.

672 By a sheer coincidence, four men of the other family had left their camping ground a fortnight before, and had gone south on their yearly pilgrimage to Baharia Oasis to bring back dates. On leaving the oasis, they had later arrived at the wadi, watered their camels, and pushed on northwards to their camping ground. About one and a half days' trek north of the wadi, about half an hour before sunset, they saw in the distance a cloud of dust advancing towards them, out of which gradually emerged a flock of sheep, an old woman, a man, and a small boy.

According to the subsequent evidence of the mother, her son Mirtah drove his sheep unconcernedly, not noticing with the rays of the setting sun in his eyes who was with the approaching camels. When they drew near he called out the usual greeting, "Peace be upon you"; but instead of the stereotyped reply, two of the camelmen suddenly leapt from their camels with heavy sticks in their hands, and rushed at Mirtah. The old mother and the small boy began to run away, while the frightened sheep scattered in all directions. Mirtah was entirely unprepared for any assault, and before he realised what was happening, he had received two thundering blows on his skull from the two men, who immediately afterwards remounted, and rode away.

Mirtah fell stunned; and as soon as his assailants had gone, his mother and the boy ran to his assistance. After a few minutes Mirtah staggered to his feet in a dazed sort of way, cursed his aggressors, whom he had recognised as belonging to the Sayed family, and said that he would be able to continue slowly. He managed with the help of his mother and the boy to cover two or three miles, but was overcome by pain and loss of blood, and again collapsed. His mother with the sheep remained by his side, and sent off the boy to the Wadi to get assistance to bring him in. Fortunately, after running a few miles, the boy came across some

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members of a neutral family with grazing camels, and with their help Mirtah was fetched in to the Wadi unconscious. 682 628

The case was reported to the police, but a few hours after his arrival in the Wadi Mirtah quietly died. The post-mortem examination revealed a skull cracked right across, with severe cerebral haemorrhage. In due course the Sirdani family claimed £400 bloodmoney from the Sayed family, according to the custom among the Gawabees tribe. This time, however, an exception was made. The sheikhs decided that the ordinary bloodmoney of £300 only should be paid by the Sayed to the Sirdani family, £100 in money and £200 in kind, divided into six yearly instalments of £50 each. 672

They also added a rider to the effect that they were not awarding Sanaa under the circumstances, as there was no proof of intent to kill, and that weapons such as guns or knives (which would imply premeditation) were not used. The presumption was that the Sayed family, though obviously intending to cause grievous bodily harm, did not intend to kill Mirtah. The fact that he died of his wounds automatically warranted the award of £300 as bloodmoney, but did not constitute sufficient justification for the imposition of the extra £100 as Sanaa.

In Common Law it is not always easy for the uninitiated to understand the legal value of a threat, or what proportion of the punishment for the completed action is due for a mere threat. It was singularly pleasing, therefore, to find a striking instance of a threat to shoot, and to see the attitude of the Bedouin court towards this particular offence. 671 683

An Arab called Abd el Kerim was tolerably well-to-do, and owned several camels, a mare, fair-sized flocks of sheep and goats, and certain cultivation rights; and he had two sons aged about sixteen and eighteen respectively. His cousin, Abd el Salam, who lived half a mile away, had four sons of ages ranging from fifteen to twenty, but he was considerably poorer in this world's goods. Abd el Kerim's sons took their camels out to graze, and inadvertently 233 685

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233 685 [578] wandered over the boundary of Abd el Salam's grazing rights. The juvenile members of Abd el Salam's family came out from their tents in a body, to drive off their intruding second cousins with their camels. An altercation ensued, and the excitement grew; and eventually a pitched battle with sticks and stones began among the lads.

683 One of Abd el Kerim's sons, leaving his brother to hold on for a moment, ran back the half mile to call his father, who returned with him to the scene of the fight carrying his gun. On arrival at the camels, Abd el Salam's sons set on him in a body. Abd el Kerim pointed his gun at one of them and took aim; whereupon one of the other family from behind laid him low with a blow on the top of his head, sufficient to fell an ox.

[114] Abd el Kerim was carried back to his tent, where the writer witnessed the horrible sight of sympathetic but homicidal relatives pawing his open wound with their filthy fingers. A large hole had been knocked in the side of his head, and portions of brain were visible. After some months of surgical treatment Abd el Kerim came out of [694] hospital; and, as the blow was reported to have affected his reason, a case was brought on his behalf by some of his relatives, claiming damages from the family of Abd el Salam. However, before the case was fully completed, [682] Abd el Kerim was taken ill, was re-admitted to hospital, and died. The case therefore became one of bloodmoney, and was dealt with in the usual way.

683 682 695 672 The interesting point about the case, however, lies in the decision of the court, when the first claim for damages was brought up. A very strong line was adopted by the sheikhs, and in the opinion of the court the wounds received by Abd el Kerim were only what he might reasonably expect. They maintained that, after the way in which he had behaved, he was lucky to have got off as lightly as he did. The sheikhs protested that he ought never to have gone out from his tent, and mixed himself up in a fight between a lot of boys. If he had any authority at all, he

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should have called a meeting with Abd el Salam, discussed the position sensibly with him, and then the two of them should have beaten all the boys soundly. Secondly, he ought never to have taken his gun with him, which was as stupid as it was dangerous. The fact that Abd el Kerim himself knew that it was not loaded made not the slightest difference to the case, as the boys did not, and could not, know whether it was loaded or not. As one of the sheikhs expressed it, "If you point a gun at me, loaded or unloaded, I'm not going to risk it. So if I retaliate by braining you, then that's your fault—not mine!"

As compared with some of the customs obtaining among the Sinai Arabs, the following case among the Aulad Ali in the Western Desert is illuminating, and will be quoted in full. The question of who is "chief mourner" of the deceased, and who draws the largest share in a bloodmoney case varies considerably between the tribes of Arab and Berber origin. Among the Aulad Ali a woman killed is automatically half the value of a man, whereas among the Arabs the value of a woman depends on a variety of conditions.

A man called Idris had two daughters, Towida and Beida. Beida married a man called Korayem Shushan of the Gereidat tribe, and Towida married Farag Gueida of the Mowalik tribe. A son had been born to Towida and Farag called Lataif Farag; and when Lataif was about four years old, his parents quarrelled about some trifling matter, and Farag divorced Towida. Two months after this, Towida went to spend a day or two with her sister Beida and Korayem, and it was while sitting alone in their tent that the accident happened which was the cause of this lawsuit. It seems that Korayem had left a loaded gun tied up with cord to the roof of the tent, suspended from the poles. While Towida was sitting there, a sudden gust of wind got up, and shook the tent violently. As the tent rocked in the wind, the gun came tumbling down on to a wooden chest between the poles; the impact fired the

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682 charge, which hit Towida at a range of only a few feet,
• 672 with fatal results.

682 Farag, who had divorced her two months before,
672 brought a claim for bloodmoney from Korayem; but when
672 the case was heard, Korayem denied that the accident had
695 happened in his tent. The assessors of this first court, which was held soon after the accident, demanded that Korayem should swear, backed by twenty-five men (i.e. half the full number of fifty, as Towida was a woman), that the accident did not take place in his tent. Then
[671] followed an example of one of the very unsatisfactory points in Bedouin Law.

Korayem, who was a powerful man belonging to the Gereidat, who were in turn a powerful family, managed to persuade the court to cancel their judgment requiring the oath from himself and his twenty-five backers, and to agree to a settlement whereby he should pay £10 and be absolved from the necessity of taking the oath. The court accepted this agreement, and proceeded to examine the claims to the bloodmoney.

682 The Moslem Law of Divorce provides that when a man
672 divorces his wife, the decree does not become absolute for
695 three months, in order that it may be ascertained whether
671 the woman be pregnant by her lately divorced husband.
586 Towida had only been divorced two months before the accident; so the question had to be decided whether Farag were legally her husband or not at the time of her death, for purposes of receiving a share of the bloodmoney. If so, he should receive one quarter; but there seems to have been some difference of opinion on this point among the assessors of the court, and the whole matter was shelved.

682 Seventeen years afterwards, Lataif Farag—then a man
672 of twenty-one—re-opened the case, claiming his mother's
695 bloodmoney. In support of his claim he produced three
694 witnesses. The first was Farag himself, who was prepared to swear that he had seen Towida lying dead in the tent of Korayem. The second was Towida's brother, who was

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prepared to swear that he had been called in; and had seen his sister dying in a pool of blood in Korayem's tent. The third was a stranger who had been passing at the time of the accident, had heard the shot, had gone into Korayem's tent, and had seen Towida lying on the floor in a dying condition. The newly-constituted court probed this evidence, without actually demanding the oath from these three witnesses, and arrived at the following conclusions:

1. That the facts of the case were common knowledge, and were as Lataif claimed.
2. That Korayem never really intended to swear that the accident did *not* happen in his tent, but had succeeded in bluffing the previous Court. This was made possible by the fact that Korayem's family were strong, and Farag's were weak.
3. That half the price of a man—i.e. £150—should be the bloodmoney in this case, provided that Farag could produce satisfactory evidence on oath that:
   (*a*) the gun belonged to Korayem,
   (*b*) the accident took place in Korayem's tent.
4. In the event of these conditions being met, Lataif Farag should receive five-sixths of the £150; and, provided that they swore the above oath backed by four others, Towida's father and mother (if alive) should receive the remaining one-sixth.

Generally speaking, this judgment appeals to an outside observer as eminently sensible and just; and if only the matter had been left at that, and the judgment had been enforced, all would have been well. Unfortunately, however, various influences again crept in to interfere with the decision of this second court. The accident had then happened about eighteen years before; the first court had been bluffed by Korayem; after an interval of seventeen years the second court gave their very reasonable judgment; and then for some reason unexplained the case was again shelved, and the judgment not executed. For the third

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time the case was re-opened, after a further interval of some years since the second judgment. By this time nearly all the assessors and witnesses of the first Court were dead, rumours had been spread that the gun belonged to a stranger who had left his gun in Korayem's tent, and should therefore pay his share of the bloodmoney, and so on.

The Gereidat family again succeeded in confusing the case, and in prejudicing the issue in their favour; and the third court gave the following decision, to the disgust of interested followers of this rather remarkable lawsuit. They decided that no evidence existed to shew what happened in Korayem's tent, and that no oath was necessary, maintaining that in the absence of any proof whatsoever Farag had no claim. They further ordered a new distribution of the reduced scale of bloodmoney proposed, whereupon the proceedings became completely involved and absolutely unintelligible.

The above events point out unmistakably the weak spots in the Ourfi system. Korayem's family were strong, and on two occasions were successful in evading just decisions against them; while the weak family with a strong case had to see justice perverted.

When the considered judgment of an Ourfi Court receives authority for prompt and immediate execution from the Government and the police, the Ourfi system is probably the nearest possible approach to the ideal, consistent with the conditions prevailing. But it is an undeniable fact, which must be faced, that without the moral backing of the Civil Power behind the judgments of the Bedouin Courts, miscarriages of justice are possible, and do actually take place.